SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1007

CLEMENT J. SHEERAN, *et al.*,
Petitioners,

v.

GENERAL ELECTRIC COMPANY,
a New York corporation,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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Question Presented

Did the District Court and a unanimous Court of Appeals err when they held that General Electric had the contractual right under its Pension Plan to extend voluntary increases in pension benefits to certain categories of beneficiaries without extending the same benefits to all other categories of beneficiaries?

Statement

The petition herein seeks to review an order of the United States Court of Appeals for the Ninth Circuit which, on an interlocutory appeal, affirmed an order of the United States District Court for the Eastern District of Washington denying petitioners' motion for summary judgment.

In an attempt to support a grant of certiorari in this case, petitioners state that the questions presented are whether the courts below failed to give them the benefit of "Congressional policies and concerns", and whether the lower courts failed to construe the General Electric Plan liberally and in favor of the employee as against the employer.

The fact is that this is a case involving the construction of the provisions of a pension plan which are *sui generis.* This contract has been twice construed by the courts below, and the petitioners' contentions have been rejected. The result does not conflict with either federal policy or the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§1001 *et seq.* ("ERISA"). There is no basis for the grant of certiorari in this matter.

Proceedings Below

The petitioners in this Court, plaintiffs below, are former employees of General Electric at the Hanford Project located near Richland, Washington. At the time they left General Electric's employ, between 1965 and 1967, they

had each been employed by the Company for the requisite number of years to obtain vested rights under the General Electric Pension Plan. They were thus "vestees" under the Plan.

In 1967 and 1971 General Electric, by amendment to the Pension Plan after union negotiation with respect to certain aspects of the Plan, granted pension increases to several categories of participants in its Pension Plan but not to all categories of participants. The terms of the relevant amendments provided specifically that these increases were granted to participants who left General Electric's employ through normal, optional (early), or disability retirement, but not to vestees. Petitioners then brought this action, contending that another provision in the Pension Plan guaranteed vestees a contractual right to the 1967 and 1971 increases and to all future increases. They moved for summary judgment below, as they do here, on the basis of one sentence in Section XII of the Pension Plan, which they rely on to the exclusion of the balance of the contract.

In a careful and thorough opinion, the District Court concluded that on "a reading of the contract as a whole" petitioners' contentions must be rejected. (A-5)* The District Court did not, as petitioners argue here, indicate "that the vestees' claim failed only for lack of one comma in Section XII." (Petition, p. 6) In fact, the District

* Reference is to the appendix to the Petition. The petitioners' Appendix D cites only selective portions of the General Electric Pension Plan, and as the lower courts held, these sections cannot be read in a vacuum. Rather then burden this Court with the full Plan, however, reference is made to the District Court's opinion, which discusses certain of the relevant provisions of the Plan ignored by petitioners.

Court carefully construed the Plan as a whole, together with the one sentence in Section XII of the Plan upon which petitioners rely, and it concluded that their motion for summary judgment was "without merit". (A-9) The Court of Appeals, on an appeal pursuant to 12 U.S.C. §1292(b), affirmed. It held:

> "Section XII does not say that people in the positions of the plaintiffs shall receive all increases in pension benefits that may later be accorded the then current employees. Instead, it provides that people in the positions of the plaintiffs shall have pension rights 'computed in the manner provided by Section IV * * *.' The latter Section sets forth the mathematical formulae for determining the pension payments that each participating employee shall receive; but computing the pension rights in the manner so provided does not result in the inclusion of the increases provided in Section XIV(19) and (21).
>
> "The addition (in Section XII) of the phrase 'as though such employee had remained continuously in the service to his normal retirement date', serves only as a factor in the manner of computation called for in Section IV." (A-10 to A-11)

ARGUMENT

The courts below did not err in their interpretation of the Pension Plan, and the result does not conflict with any federal policy or with the Employee Retirement Income Security Act of 1974.

A. The Employee Retirement Income Security Act of 1974

The vagueness with which petitioners refer to ERISA demonstrates that they are not claiming that the result below conflicts with any provision of that statute. The result is also consistent with the policy and purpose of that law. Unquestionably, it was the intent of Congress to protect employees' rights to pension benefits accrued during employment by requiring vesting for employees with certain minimum service. In furtherance of this policy, the Act contains certain alternative mandatory minimum vesting requirements. All are prospective in their application, and have no effect on the rights of already terminated employees.* They do not in any way prohibit an employer from voluntarily increasing the benefits of certain categories of pensioners without extending these benefits to vestees.

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* The actual vesting provisions of ERISA are effective, at the earliest, for plan years beginning after December 31, 1975. ERISA, §§211(b), 1017(a), (b); 29 U.S.C. §1061(b). The benefits of such vesting provisions will not extend to any employees whose service was terminated prior to the enactment of the Act unless such employees have three years of service subsequent to 1970. ERISA, §§203(b)(1), 1012(a); 29 U.S.C. §1053(b)(1), 26 U.S.C. §411(a)(4). None of the petitioners here had such service. All petitioners' service terminated in 1967 or prior years, and they were fully vested in all of the benefits accrued for them under the Plan at the time of their termination. (Petition, pp. 3, A-2).

In a section of ERISA relied on by petitioners, but not quoted, the Act provides for further study by the Secretary of Labor to investigate steps necessary to be taken to protect "to the extent feasible * * * against *forfeitures* of pension or retirement rights or benefits, *otherwise provided*, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts * * *." ERISA, §3032(a), 29 U.S.C. §1232(a) (emphasis supplied). The purpose of the Secretary's study, which will take up to two years, is to develop, if feasible, recommendations for Federal procurement regulations to protect such rights. Conference Report, H.R. Rep. 1280, 93d Cong., 2d Sess. 282 (1974). But here, as the courts below held, there was no "forfeiture" of pension rights "otherwise provided". Petitioners' vested rights under the Plan are precisely those rights which accrued to them when General Electric was replaced as the contractor of the Hanford Project and petitioners' employment was terminated.

Petitioners do additionally claim they possess rights to later increases granted to other categories of beneficiaries. But the Pension Plan does not so provide, and ERISA does not prohibit an employer from voluntarily increasing the pension benefits of one category of pensioner without providing the same increases to all other categories. Had the statute attempted to adopt this result, in fact, it would have rejected all prior authority on the issue, as the federal courts have held in every case in which the point has been raised that a pensioner has no inherent right to share in increased pension benefits which may be granted to other categories of beneficiary. See *infra*, pp. 7-9.

B. The Interpretation of Pension Plans and Judicial Authority

Petitioners also contend here that pension plans must be construed liberally in favor of the employees and against the employer. But petitioners made the same contention in the courts below. The courts concluded that a fair reading of the General Electric Plan as a whole could not support petitioners' construction of the contract. The petitioners here argue that the courts, as a result, failed to protect their vested rights. But the conclusion of both the District Court and the Court of Appeals was that the petitioners' vested rights were *not* altered without petitioners' consent, because they did not possess the right to force General Electric to include them in all future pension increases. Certiorari should not be granted so that this Court can again interpret a contract which has already been twice properly construed by two courts.

Moreover, the rule which petitioners appear to espouse, that an employer may not extend benefits to one group of pensioners without extending them to all, has been uniformly rejected by federal and state courts. See *Reynolds* v. *Galbreath* (S.D.N.Y. 66 Civ. 4312, March 17, 1969) (unreported), *aff'd per curiam on the basis of the District Court opinion*, 427 F.2d 719 (2d Cir.), *cert. denied*, 400 U.S. 926 (1970); *Hurd* v. *Illinois Bell Tel. Co.*, 136 F.Supp. 125 (N.D. Ill. 1955), *aff'd*, 234 F.2d 942 (7th Cir.), *cert. denied*, 352 U.S. 918 (1956); *Sessions* v. *Southern California Edison Co.*, 47 Cal. App.2d 611, 118 P.2d 935 (Dist. Ct. App. 1941); *cf. Nelson* v. *American Air Filter Co.*, 472 F.2d 1169 (9th Cir. 1973); *Kenny* v. *Hampton*, 475 F.2d 1323 (D.C. Cir. 1973).

In *Reynolds* v. *Galbreath, supra,* Allie Reynolds, a former major league baseball player, brought a class action against the Major League Baseball Players' Pension Committee, claiming a right to increased benefits which had been granted to participants in the Plan who had active service in the major leagues during or after the 1957 Major League Baseball season. The District Court held that Reynolds, as a former employee, had no substantive legal or equitable right to share in pension increases granted to other beneficiaries of the Plan. It said:

> "In the absence of an enforceable contract right to increased pension benefits, there is no judicial authority to create, for former employees, an equitable right to share, forever, in increases won by present employees in the course of bargaining. * * * The action of the Pension Committee—granting greater benefits to one class of players, and not another—was lawful and cannot be altered by juridical fiat."

The Second Circuit affirmed and this Court denied certiorari.

Likewise, in *Hurd* v. *Illinois Bell Tel. Co., supra,* the court stressed that a participant in a pension plan was not discriminated against by virtue of increased benefits granted to others. The court stated:

> "* * * [T]he only issue would seem to be whether it is unlawful for the defendants to liberalize their plan without applying the new terms retroactively, and in the future to employees already retired. That they may do this seems to follow from the decision in *Sessions* v. *Southern California Edison Co.* * * * This Court would be reluctant to impose an inflexible rule that an employer may not adopt more advantageous pension

rules for employees who have not yet retired without at the same time extending the full benefit of those provisions to employees already retired." 136 F.Supp. at 150.

The Seventh Circuit affirmed and this Court denied certiorari.

This consistent line of authority, undisturbed by this Court, shows clearly that there is no conflict between the result below and sound policy.

Conclusion

The interpretation of the General Electric Pension Plan by the District Court and Circuit Court does not deprive the petitioners of any of their vested rights, does not conflict with the Employee Retirement Income Security Act of 1974, and is consistent with federal and state judicial authority. The Petition does not raise any substantial question for consideration by this Court, nor does the result below conflict with the decision of any other court. Certiorari should be denied.

Respectfully submitted,

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